IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION Nos. 8430 AND 21015 OF 1997

W.P.No.8430 of 1997

Between:

1. The Superintending Engineer,
   Panchayat Raj Department, Karimnagar.
2. The Executive Engineer, Panchayat Raj Department,
   Jagityal, Karimnagar District.
3. The Deputy Executive Engineer, Panchayat Raj,
   Sub-Division, Vemulawada, Karimnagar District.

..... PETITIONER

AND

1. The Chairman-cum-Presiding Officer,
   Industrial Tribunal-cum-Labour Court,
   Godavarikhani, Karimnagar District.
2. S.D.Sarwar, S/o. Alam
   R/o. Suddala, Vemulawada Mandal,
   Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari to call for the records relating to I.D.No.96 of 1993 dated 14.8.1996 of the Labour Court-cum-Industrial Tribunal, Godavarikhani, Karimnagar District, to quash the same as illegal, arbitrary without jurisdiction and to pass such other orders.

Counsel for the Petitioners: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT.

Counsel for the Respondent No.1:----------

Counsel for the Respondent No.2: MR.B.G.RAVINDRA REDDY

The Court made the following Order :

W.P.No.21015 of 1997

Between

1. S.D.Sarwar, S/o. Alam

   R/o. Suddala, Vemulawada Mandal,

   Karimnagar District.

   PETITIONER

AND

1. The Chairman-cum-Presiding Officer,

Industrial Tribunal-cum-Labour Court,

Godavarikhani, Karimnagar District.

2. The Superintending Engineer,

Panchayat Raj Department, Karimnagar.

3. The Executive Engineer, Panchayat Raj Department,

   Jagityal, Karimnagar District.

4. The Deputy Executive Engineer, Panchayat Raj,

   Sub-Division, Vemulawada, Karimnagar District.

(Dismissed for default as per Court order dated 17.08.2000

as against R.2)

..... RESPONDNETS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari and quash the award in I.D.No.96 of 1993 dated 14.8.1996 after calling for the records from the Labour Court-cum-Industrial Tribunal, Godavarikhani, Karimnagar District, and direct the respondent Nos.2 to 4 to reinstate the petitioner into service with full back wages and all other attendant benefits and to pass such other orders.

Counsel for the Petitioner: MR. B.G.RAVINDRA REDDY

Counsel for the Respondent No.1:----------

Counsel for the Respondent No.2 to 4: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT.

The Court made the following Order:

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NOs.8430 AND 21015 OF 1997

COMMON ORDER:

Both these writ petitions can be disposed of by a common order as they arise out of common award dated 14.08.1996 in I.D.No. 96 of 1993 passed by the Labour Court-cum-Industrial Tribunal, Godavarikhani, Karimnagar District.

The workman was appointed as NMR Assistant on 16.04.1986 in the Engineering wing of the Panchayat Raj Department under the control of the fourth respondent and that he was paid Rs.25/- per day and continued in the same capacity till 1988. As the Management did not allow the workman to perform his duties from 16.05.1988, the workman approached the Tribunal by

filing I.D.No.96 of 1993 alleging that the third respondent without following the provisions of the Industrial Disputes Act terminated him from service. The Tribunal, having found that the workman worked for more than 240 days continuously within a year, came to the conclusion that the respondents failed to follow the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') before termination of services, which is mandatory. Though the Tribunal has given such a finding, since the respondents relied on the provisions of A.P. (Regulation of Public Services and Rationalisation of Staff Pattern and Pay Structures) Act, 1994 (for short 'Act No.2 of 1994) as per which, regular appointment of daily wage employees are prohibited, it refused to grant the relief of reinstatement and awarded compensation of Rs.18,000/- with interest at 12% from the date of I.D. till realisation. Aggrieved by the same, the Management as well as the workman has preferred these two writ petitions.

Learned Government Pleader appearing for the Management contended that the Tribunal erred in directing the respondents to pay Rs.18,000/- even though there is no specific provision to grant such compensation. He further contended that in view of the specific bar contained under the provisions of Act 2 of 1994 banning the appointments, the workman is not entitled to any relief. He also contended that there is no specific provision under the Act to award compensation especially in cases of non-compliance of procedure contemplated under Section 25-F of the Act.

On the other hand, learned counsel for the workman, supported the award insofar as non-compliance of Section 25-F of the Act is concerned, but with reference to the rejection of reinstatement, he contended that Act 2 of 1994 does not come in the way of ordering reinstatement as there is no such provision. The effect of non-compliance of Section 25-F of the Act is that the alleged termination order would be nonest, as a consequence, the workman is deemed to be in continuity of service. He further contended that since the petitioner was appointed in the year 1986 itself, the provisions of Act 2 of 1994 have no application to the present case. Learned counsel also relied on the judgment of this Court reported in **Municipal Commissioner, Rajendranagar v . Smt. D.Susheela**, wherein this Court had an occasion to consider the provisions of Act 2 of 1994 and held that the provisions of the Act have no

application with reference to the cases covered by the Industrial Disputes Act. Similarly in the case of **M/s. Singareni Collieries Co.Ltd v. Sk.Anwar Basha & others**, this Court held that it is settled law, that where the termination is illegal, especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. Hence, learned counsel for the workman contended that the impugned order is liable to be set aside to the extent of denial of reinstatement relying on Act 2 of 1994.

Heard both sides and considered the material available on record.

The issue to be considered is whether the Tribunal is just and proper in awarding compensation and whether the denial of reinstatement is sustainable or not?

There is no factual dispute that the workman worked for more than 240 days as NMR Assistant and continued as such till 16.05.1988. As the services of the workman were discontinued without any order or without following the provisions of the Act, he approached the Tribunal seeking appropriate relief. The Tribunal, after considering that the Management failed to follow the provisions of Section 25-F of the Act, instead of ordering reinstatement, relying on the provisions of Act 2 of 1994, denied the relief on the premise that there is prohibition in ordering reinstatement and therefore, awarded compensation of Rs.18,000/-. The grievance of the workman is that since the order of termination is illegal and unsustainable and declared as nonest, the consequence has to follow and the workman is deemed to be in service. The Tribunal, instead of granting the relief of ordering reinstatement, had committed an illegality in denying the same relying on the provisions of Act 2 of 1994. The impugned award to that extent is contrary to the judgments of this Court referred to supra. Therefore, to that extent, the award is set aside and the workman is deemed to be in service. However, as the workman had approached the Tribunal in the year 1993, after a lapse of five years, he is not entitled to back wages, but only for reinstatement with continuity of service and other benefits to which he is entitled to under law. In fact, it is stated that some of his juniors are continuing in the department. If that be so, the workman is

entitled for seniority. In the light of the relief granted by this Court, the compensation already awarded by the Tribunal is liable to be set aside and is accordingly set aside.

Accordingly, the writ petitions are disposed of. No costs.

19..11..2004

usd

To

1. The Chairman-cum-Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Godavarikhani, Karimnagar District.
2. The Superintending Engineer,
Panchayat Raj Department, Karimnagar.
3. The Executive Engineer, Panchayat Raj Department,
Jagityal, Karimnagar District.
4. The Deputy Executive Engineer, Panchayat Raj,
Sub-Division, Vemulawada, Karimnagar District.
5. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court
Buildings, High Court of A.P., Hyderabad (OUT).

6. Two CD copies.